



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

)	ISCR Case No. 12-09391
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

04/30/2013

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns under Guideline F. He provided sufficient information to mitigate the security concern under Guideline E. Eligibility for access to classified information is denied.

Statement of the Case

On February 21, 2012, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 3) He previously submitted similar e-QIPs on April 4, 2008 (Item 4), and August 8, 2006 (Item 5). Applicant was either denied access to classified information or not hired for the positions requiring a security clearance. On February 23, 2012, Applicant was interviewed by a security investigator and discussed his delinquent debts. (Item 11) On August 24, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F, and security concerns for personal conduct under Guideline E. (Item 1) The action was taken under Executive Order 10865, *Safeguarding*

Classified Information within Industry (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on September 9, 2012, admitting nine of the 12 allegations under Guideline F. He did not answer the Guideline E allegation. Applicant elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on January 8, 2013. Applicant received a complete file of relevant material (FORM) on February 12, 2013, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. On April 11, 2013, Applicant provided additional information in response to the FORM. Department Counsel had no objection to consideration of the additional information. The case was assigned to me on April 26, 2013.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 53-year-old interpreter for a defense contractor. He was born in Afghanistan and graduated from the law university in 1983. He served one year of mandatory service in the Afghanistan military from 1988 until 1989. Applicant left Afghanistan in 1989 and entered Pakistan as a refugee. He arrived in the United States in 1994, and became a U.S. citizen in 2006. From January 1995 until January 2012, he was self-employed as a cab driver. He applied for employment as an interpreter in 2006 and 2008. He completed security clearance applications but was not hired. In January 2012, he started working as an interpreter for a defense contractor. He completed his latest security clearance application in February 2012. He is working in Afghanistan as an interpreter pending the outcome of his application for a security clearance. Applicant is married with three children. (Item 3, e-QIP, dated February 21, 2012)

Credit reports (Item 6, dated August 20, 2012; Item 7, dated February 13, 2012; and Item 8, dated February 10, 2012) show the following delinquent debts for Applicant: a credit card debt charged off for \$1,310 (SOR 1.a); a credit card debt charged off for \$1,824 (SOR 1.b); a charged off debt of \$1,258 (SOR 1.c); a credit card debt charged off for \$548 (SOR 1.d); a credit card debt charged off for \$2,897 (SOR 1.e); a department store credit card charged off for \$539 (SOR 1.f); a credit card debt in collection for \$538 (SOR 1.g); an account placed for collection for \$4,903 (SOR 1.h); a credit card account placed for collection for \$631 (SOR 1.i); an account placed for collection for \$610 (SOR 1.j); an account placed for collection for \$1,651 (SOR 1.k); and an account placed for collection for \$545 (SOR 1.l). The total amount of the delinquent debt listed in the SOR is \$17,881. In addition to the debts listed in the SOR, the credit reports list another credit card debt in judgment for \$1,237.

Applicant had no financial problems until 2008. His income as a cab driver was sufficient to meet his financial needs. He had credit cards he used for living expenses but he was current with the payments. When there was an economic downturn starting in 2008, Applicant's income was cut in half and he experienced financial problems. He also reported that he paid \$1,000 monthly for his daughter's college tuition, and his rent payments increased substantially. Tuition payments are not listed on his Personal Financial Statement. His income was approximately \$3,800 per month but he had monthly bill payments in excess of \$4,000. When he started experiencing financial problems, he contacted a credit counseling law firm to assist him in managing his delinquent debts. He paid the firm \$250 per month to assist him. The law firm paid his delinquent debts until 2009 when his income dropped again and he decided to deal with the delinquent debt himself. (Item 11, Personal Interview, at 6-7)

Applicant admits the delinquent debts at SOR 1.a -1.e, 1.h, and 1.j to 1.l. The credit bureau reports list that most of these accounts were opened between 2003 and 2005. No payments have been made on most of these accounts since 2008. Most of the accounts became delinquent in 2009. In response to the SOR, Applicant claims to have paid the debts at SOR 1.f, 1.g, and 1.i. However, he provided no information to verify that these debts were paid.

In response to the FORM, Applicant provided documentation of settlement agreements reached in April 2013 for the debts at SOR 1.j, 1.k, and 1.l. The first payments under the settlement agreements were due in later April 2013, shortly after Applicant responded to the FORM. No evidence was presented to verify any payments made in accordance with the settlement agreements. Applicant also noted in the response to the FORM that he reached settlement agreements on the debts listed at SOR 1.b, 1.d, 1.e, and 1.h. No information was presented to show settlement agreements. In addition, he stated that he provided his employer's security officers copies of proof of payment made on the debts listed at SOR 1.f, 1.g, and 1.i. None of these documents are contained in the case file. In addition, he notes that he paid the debt at SOR 1.a and provided his security officer proof of payment. There is no information concerning this payment in the case file. Applicant also notes that he contacted the creditor for the debt at SOR 1.c but they did not recognize the debt. He stated that he will work with the creditor to find a solution to the debt. (Response to FORM, dated April 11, 2013)

Applicant listed no delinquent debt or financial issues in his security clearance applications in 2006 and 2008. He reported that he did not have delinquent debt until 2009. In the 2012 security clearance application, Applicant reported that in the last seven years, he had charged off and collection accounts. He specifically listed four delinquent accounts. In a certificate submitted with the security clearance application (SF 86C), he listed seven delinquent accounts. He stated that in completing the security clearance application in Afghanistan, he copied the debts listed on his credit reports provided by his employer. (Item 11 at 6) He was interviewed by security investigators two days after submitting his security clearance application, and he discussed his delinquent debts. (Item 11 at 7) In response to the SOR, Applicant denied an intentional

falsification of his security clearance application in regard to his delinquent debts. He stated that he listed the delinquent debts that he was aware of on the security clearance application. (Response to SOR, dated September 9, 2012)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, thereby raising questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

It is well-settled that adverse information in a credit report can normally meet the substantial evidence standard of the government's obligation to establish financial delinquency. At that point, the burden shifts to the Applicant to establish either that he is not responsible for the debt or that matters in mitigation apply. (ISCR Case No. 08-12184 at 7 (App. Bd. January 7, 2012)) Applicant's delinquent debts listed in credit reports raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). The delinquent debt shows a history of both an inability and unwillingness to satisfy the debt.

I considered Financial Considerations Mitigating Condition AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment); and AG ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation) and the individual acted responsibly under the circumstances). These mitigating conditions do not apply.

Applicant was steadily self-employed as a cab driver for over 13 years when he experienced a decline in his income because of economic issues. He provided no documentation to support the reduced income and what steps he took to manage his finances and pay debts with reduced income. He reported another negative economic factor was the requirement to pay his daughter's college tuition. He provided no

documentation of the tuition payments and tuition payments are not listed on his personal financial information. Most of his debts have been delinquent for over five years. He claims to have paid some of the debts but there is no proof of payment in the file. His response to the FORM shows that he is only now reaching settlement agreements with some of the creditors. A loss of income may qualify as circumstances beyond his control. But he did not show that he took reasonable action to resolve his debts under the circumstances. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that his financial problems are not under control. He has not presented information to show he acted responsibly towards his finances.

I considered AG ¶ 20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control). Applicant presented no information to indicate an agreement with a debt solution company which may require that Applicant receive credit counseling. He noted that he worked with a law firm from 2006 until 2009 to resolve his indebtedness. He presented no information that they provided and he received financial counseling. There is no indication his financial problems are being resolved or under control.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. Applicant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan.

Applicant failed to establish such a meaningful track record. Applicant did not present sufficient evidence to show that he paid any of his debts. He claims to have paid some debts but there is no information in the file to show payment of the debts. He reached settlement agreements on three debts but there is no information that he made payments under the settlement agreements. Applicant had delinquent debt since 2009. He did not negotiate settlement agreements until 2013, four years later. Even if Applicant made payments under the settlement agreements, the long period of inactivity to resolve the debts does not equate to a good-faith effort to resolve debt because it does not show a reasonable, prudent, and honest adherence to his financial obligations. Applicant's failure to act until recently to resolve his delinquent debts and the lack of documented payments on his debts is significant and disqualifying. Based on the acknowledged delinquent debt and the failure to establish payment of the debt, Applicant has not acted responsibly. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Personal Conduct

A security concern is raised for personal conduct based on Applicant's responses to financial questions on his e-QIP. Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

On his e-QIP application for a security clearance, Applicant listed some but not all of his delinquent debts. His failure to list all of his delinquent debts could raise a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the deliberate omission concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness).

Applicant denied intentional falsification by failing to list all of his delinquent debts. Applicant stated that he listed the delinquent debts he knew based on the credit reports available to him. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. Applicant listed the delinquent debt he knew thereby putting the government on notice that he had financial issues. Two days after completing the security clearance application, he was interviewed by security investigators and discussed his delinquent debt with them. The government was aware of the financial issues. I find Applicant did not deliberately fail to provide correct and accurate financial information on the security clearance application. He provided the information he knew and the government was alerted that he had financial problems. I find for Applicant as to personal conduct.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered that Applicant volunteered to go in harm's way as a linguist for the U.S. Armed Forces in a combat zone. However, Applicant has not established a meaningful track record of paying his delinquent debts. He has not provided sufficient credible documentary information to show payments on his debts he claimed to have made. He failed to provide sufficient information to establish he acted reasonably and responsibly to address his delinquent debts and resolve his financial problems. He has not established a credible plan to resolve and pay the debt. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. The lack of responsible management of financial obligations indicates he may not be concerned or act responsibly in regard to classified information. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. He did mitigate the security concern for personal conduct. Eligibility for access to classified information is denied.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a- 1.l:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a;	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge